

§ 2002.18

(7) *Exceptions to agreements.* Agencies need not enter a written agreement when they share CUI with the following entities:

(i) Congress, including any committee, subcommittee, joint committee, joint subcommittee, or office thereof;

(ii) A court of competent jurisdiction, or any individual or entity when directed by an order of a court of competent jurisdiction or a Federal administrative law judge (ALJ) appointed under 5 U.S.C. 3501;

(iii) The Comptroller General, in the course of performing duties of the Government Accountability Office; or

(iv) Individuals or entities, when the agency releases information to them pursuant to a FOIA or Privacy Act request.

(b) *Controls on accessing and disseminating CUI—(1) CUI Basic.* Authorized holders should disseminate and encourage access to CUI Basic for any recipient when the access meets the requirements set out in paragraph (a)(1) of this section.

(2) *CUI Specified.* Authorized holders disseminate and allow access to CUI Specified as required or permitted by the authorizing laws, regulations, or Government-wide policies that established that CUI Specified.

(i) The CUI Registry annotates CUI that requires or permits Specified controls based on law, regulation, and Government-wide policy.

(ii) In the absence of specific dissemination restrictions in the authorizing law, regulation, or Government-wide policy, agencies may disseminate CUI Specified as they would CUI Basic.

(3) *Receipt of CUI.* Non-executive branch entities may receive CUI directly from members of the executive branch or as sub-recipients from other non-executive branch entities.

(4) *Limited dissemination.* (i) Agencies may place additional limits on disseminating CUI only through use of the limited dissemination controls approved by the CUI EA and published in the CUI Registry. These limited dissemination controls are separate from any controls that a CUI Specified authority requires or permits.

(ii) Using limited dissemination controls to unnecessarily restrict access to

32 CFR Ch. XX (7–1–21 Edition)

CUI is contrary to the goals of the CUI Program. Agencies may therefore use these controls only when it furthers a lawful Government purpose, or laws, regulations, or Government-wide policies require or permit an agency to do so. If an authorized holder has significant doubt about whether it is appropriate to use a limited dissemination control, the authorized holder should consult with and follow the designating agency's policy. If, after consulting the policy, significant doubt still remains, the authorized holder should not apply the limited dissemination control.

(iii) Only the designating agency may apply limited dissemination controls to CUI. Other entities that receive CUI and seek to apply additional controls must request permission to do so from the designating agency.

(iv) Authorized holders may apply limited dissemination controls to any CUI for which they are required or permitted to restrict access by or to certain entities.

(v) Designating entities may combine approved limited dissemination controls listed in the CUI Registry to accommodate necessary practices.

(c) *Methods of disseminating CUI.* (1) Before disseminating CUI, authorized holders must reasonably expect that all intended recipients have a lawful Government purpose to receive the CUI. Authorized holders may then disseminate the CUI by any method that meets the safeguarding requirements of this part and the CUI Registry and ensures receipt in a timely manner, unless the laws, regulations, or Government-wide policies that govern that CUI require otherwise.

(2) To disseminate CUI using systems or components that are subject to NIST guidelines and publications (*e.g.*, email applications, text messaging, facsimile, or voicemail), agencies must do so in accordance with the no-less-than-moderate confidentiality impact value set out in FIPS PUB 199, FIPS PUB 200, NIST SP 800-53 (incorporated by reference, see § 2002.2).

§ 2002.18 Decontrolling.

(a) Agencies should decontrol as soon as practicable any CUI designated by their agency that no longer requires safeguarding or dissemination controls,

unless doing so conflicts with the governing law, regulation, or Government-wide policy.

(b) Agencies may decontrol CUI automatically upon the occurrence of one of the conditions below, or through an affirmative decision by the designating agency:

(1) When laws, regulations or Government-wide policies no longer require its control as CUI and the authorized holder has the appropriate authority under the authorizing law, regulation, or Government-wide policy;

(2) When the designating agency decides to release it to the public by making an affirmative, proactive disclosure;

(3) When the agency discloses it in accordance with an applicable information access statute, such as the FOIA, or the Privacy Act (when legally permissible), if the agency incorporates such disclosures into its public release processes; or

(4) When a pre-determined event or date occurs, as described in §2002.20(g), unless law, regulation, or Government-wide policy requires coordination first.

(c) The designating agency may also decontrol CUI:

(1) In response to a request by an authorized holder to decontrol it; or

(2) Concurrently with any declassification action under Executive Order 13526 or any predecessor or successor order, as long as the information also appropriately qualifies for decontrol as CUI.

(d) An agency may designate in its CUI policies which agency personnel it authorizes to decontrol CUI, consistent with law, regulation, and Government-wide policy.

(e) Decontrolling CUI relieves authorized holders from requirements to handle the information under the CUI Program, but does not constitute authorization for public release.

(f) Authorized holders must clearly indicate that CUI is no longer controlled when restating, paraphrasing, re-using, releasing to the public, or donating it to a private institution. Otherwise, authorized holders do not have to mark, review, or take other actions to indicate the CUI is no longer controlled.

(1) Agency policy may allow authorized holders to remove or strike through only those CUI markings on the first or cover page of the decontrolled CUI and markings on the first page of any attachments that contain CUI.

(2) If an authorized holder uses the decontrolled CUI in a newly created document, the authorized holder must remove all CUI markings for the decontrolled information.

(g) Once decontrolled, any public release of information that was formerly CUI must be in accordance with applicable law and agency policies on the public release of information.

(h) Authorized holders may request that the designating agency decontrol certain CUI.

(i) If an authorized holder publicly releases CUI in accordance with the designating agency's authorized procedures, the release constitutes decontrol of the information.

(j) Unauthorized disclosure of CUI does not constitute decontrol.

(k) Agencies must not decontrol CUI in an attempt to conceal, or to otherwise circumvent accountability for, an identified unauthorized disclosure.

(l) When laws, regulations, or Government-wide policies require specific decontrol procedures, authorized holders must follow such requirements.

(m) The Archivist of the United States may decontrol records transferred to the National Archives in accordance with §2002.34, absent a specific agreement otherwise with the designating agency. The Archivist decontrols records to facilitate public access pursuant to 44 U.S.C. 2108 and NARA's regulations at 36 CFR parts 1235, 1250, and 1256.

§ 2002.20 Marking.

(a) *General marking policy.* (1) CUI markings listed in the CUI Registry are the only markings authorized to designate unclassified information requiring safeguarding or dissemination controls. Agencies and authorized holders must, in accordance with the implementation timelines established for the agency by the CUI EA:

(i) Discontinue all use of legacy or other markings not permitted by this